IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15931 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

VISHNUBHAI P. PATEL

Appearance:

MR HARDIK C RAWAL for the Petitioner.

Mr. RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 27/04/2005

ORAL JUDGEMENT

This petition has been preferred against the award dated 5th June,2004 in Reference (IT) No. 33 of 1996 passed by the Industrial Tribunal, Rajkot, whereby, punishment inflicted by the petitioner of reduction of pay scale was set side and instead of it,

one annual increment was stopped without future effect, for the misconduct of misuse of issued tickets by the respondent workman-conductor.

2. The learned counsel for the petitioner mainly submitted that the respondent workman was a conductor. The petitioner is an ST Corporation which runs state transport buses for the welfare of the society members and it mainly depends upon the working of conductors and drivers. The drivers are driving buses and conductors are recovering fares from passengers, out of which, mainly salaries are paid and services are purchased. The conductors are dealing with public money. They are holding the post of faith and trust. They are working in fiduciary capacity. Honesty and integrity is an integral part of the duty of the conductor who is holding the post of trust. If there is any misappropriation of the amount, whether big or small, it tantamounts to a grave misconduct. In the present case, the respondent conductor had issued certain tickets and all those tickets were once again used. The way bill was also kept open. Additional cash was also found out from the pocket of the respondent conductor. It has been held by the Industrial Tribunal in para-11 that the aforesaid misconduct and charge is proved. Tickets were used second time by the respondent workman, but the Industrial Tribunal has shown misplaced sympathy for the respondent conductor by giving a reason that the said ST bus was on the route of the fair and there were several passengers in the said bus and the additional cash which was found out was not recovered with malafide intention. These reasons are not true and correct. Even if bus route is having many more passengers, then also, the conductor cannot reissue the already issued tickets. Second time use of the same tickets and thereby certain amount has also been recovered by the respondent workman is a grave misconduct. Additional amount of Rs.315/- was found from the respondent conductor. Once the Labour Court comes to a conclusion that the respondent conductor has reused the tickets which were already issued, coupled with the fact that some additional cash amount was found out from the respondent workman, it was not necessary for the Industrial Tribunal to interfere with the punishment inflicted by the petitioner. The reduction in the pay scale of the respondent workman and to bring him to initial pay scale and stoppage of five increments with future effect was not shockingly disproportionate. In fact, the petitioner Corporation has already shown leniency towards respondent conductor in the case of misconduct of misappropriation. In fact, there are several decisions delivered by this Court as well as by

the Hon'ble Apex Court, whereby punishments of dismissal in case of misappropriation by conductors have been upheld. In the present case, though tickets have been reused by the respondent conductor, instead of dismissal, lesser punishment has been inflicted by the petitioner and further reduction in the said punishment was not necessary for the Industrial Tribunal. The punishment should not be inflicted for the name's sake. The punishment must have some effect upon the delinquent. Punishment must have some effect upon other similarly situated workmen. In the present case, even the way bill was kept open. Additional cash amount was also found out from the respondent. It is accepted by the Industrial Tribunal that the respondent conductor reissued tickets which were already issued once. The cumulative effect of the aforesaid factors tantamounts to a grave misconduct. The tickets were used second time. This fact has been held as proved one as per para-11 of the award and therefore, interference in the punishment was not warranted by the Industrial Tribunal in exercise of powers under section 11A of the Industrial Disputes Act, 1947. Therefore, the award passed by the Industrial Tribunal, Rajkot deserves to be quashed and set aside. The punishment inflicted by the petitioner Corporation was just, proper and in consonance with the nature of misconduct. It cannot be said by any stretch of imagination that the same was shockingly disproportionate. The reasons advanced by the Industrial Tribunal are not true and correct and therefore also, the award passed by the Industrial Tribunal deserves to be quashed and set aside.

3. Though notice of Rule issued by this Court has been duly served upon the respondent, nobody appeared on behalf of the respondent. Neither the respondent has appeared in person nor through his lawyer. Therefore, this Court, once again on 23rd March, 2005 gave one more opportunity and waited for the respondent to come and argue out his case. Thereafter, the matter was adjourned to 31st March, 2005 and again it was kept on 6th April, 2005. Again on 6th April, 2005, the respondent has not appeared and therefore, the matter was kept on 20th April, 2005. Thereafter, today on 27th April, 2005, when the matter is called out, the respondent has not remained present either personally or through his learned advocate.

4. I have heard the learned counsel for the petitioner and perused the case papers. Looking to the facts and circumstances of the case, nature of misconduct and the quantum of punishment inflicted by the

petitioner, the impugned award passed by the Industrial Tribunal, Rajkot which reduces the punishment, in my opinion, the impugned award dated 5th June, 2005 in Reference (IT) no.33 of 1996 passed by the Industrial Tribunal, Rajkot deserves to be quashed and set aside, especially for the following reasons:

(i) The petitioner Corporation is running State Transport buses for the transportation of public at large. The petitioner's main concern is that of running buses by drivers and collecting fare by conductors. Thus, for performance of its duties, petitioner Corporation is mainly concerned with drivers and conductors. These are the two posts with which they are mainly concerned. Rest of the persons are aiding and assisting conductors and drivers. In the present case, we are concerned with conductor who is collecting money from passengers who are travelling in the ST bus. The conductors are wedded with duty of recovery of fares from passengers. Because of their recovery, the whole show of the petitioner is being run, i.e. for providing services or for making payment of salaries. Salaries are to be paid and services are to be purchased, mainly from the collection of fares from passengers by the workmen like the respondent, who is a conductor. Thus, they are holding a post of trust and confidence. Honesty and integrity are so interwoven with their functioning that they cannot be separated. They are dealing with public money.

(ii) If the persons who are holding the posts of trust and confidence like the respondent workman, commit misappropriation, whether of a small or large amount, irrespective of the size of amount, must be viewed very seriously and such type of misconduct ought to be handled with "iron hand" as held by the Hon'ble Supreme Court in the case of Regional Manager, U.P. SRTC, Etawah and others vs. Hotilal and another reported in (2003) 3 SCC, 605. Para-10 of the said judgment reads as under:

"10. It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the

indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (See Alexander Machinery (Dudley) Ltd. vs. Crabtree). A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree or integrity and trustworthiness is a must and unexceptionable. Judged in that background conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal." (Emphasis supplied).

(iii) The case of misappropriation at the behest of the conductor happened frequently with the petitioner Corporation. Time and again, the Division Bench of this Court as well as the Hon'ble Supreme Court has held that punishment of dismissal from service for misappropriation by a conductor is not shockingly disproportionate and, therefore, have not been interfered with in past. In the present case, the respondent conductor has reused the tickets which were already issued once. This fact has been accepted as proved in para-11 of the award passed by the Industrial Tribunal, Rajkot. Additional cash was also found out from the respondent conductor. The way-bill was also kept open. The cumulative effect of all the aforesaid three factors tantamounts to grave misconduct of misappropriation of amount.

Nonetheless, the petitioner has already shown sympathy and instead of dismissal, has inflicted lesser punishment of reduction of pay scale of the respondent workman. The respondent conductor's salary has been reduced to initial pay of the conductor and stoppage of five increments with future effect. Looking to the nature of misconduct, the interference in the quantum of punishment was not necessary by the Industrial Tribunal, Rajkot. The conductors are holding the post of faith and confidence. Honesty and integrity is an integral part of the duty of conductor. Misappropriation of the amount, whether big or small, ought to be handled with iron hand as held by the Hon'ble Supreme Court in the case of reported in (2003) 3 SCC, 605 (Supra). The punishment inflicted by the petitioner Corporation was just and proper, adequate and in consonance with the nature of misconduct committed by the respondent workman. Further reduction in the punishment was unwarranted by the Industrial Tribunal, Rajkot.

(iv) In a similarly situated, Division Bench of this Court, in the case of Gujarat State Road Transport Corporation vs. Jamnadas Becharbhai, reported in 1982 Gujarat Law Herald, 1057 has held as under:

"2. We are however, constrained to elaborate the rider added by us in proposition no. 9 wherein it has been observed by us that when an employee holding a sensitive post of trust has been dismissed from service the matter may have to be viewed in a different light. By way of illustration we have referred to pilferage by a cashier or a store-keeper from the stores in his charge. Perhaps we should have anticipated a situation like the present and referred to misappropriation by a bus conductor who has collected fare from passengers but has failed to issue tickets to them. If a bus conductor has been dismissed in such circumstances, his reinstatement in the same post would enable him to indulge in the same malpractice in future. Everyday, he has to collect fare and issue tickets. Reinstatement in the same post would therefore, involve grave risk because of the repetitive opportunity that he would get to indulge in the malpractice and the daily temptation that he would face. Perhaps he would

be tempted to repair the past losses. Under the circumstances, when in a fit case the Labour Court reaches the conclusion that misappropriation by a bus conductor has been established (in view of the evidence showing that he had collected the fare from the passengers but had not issued tickets though he had sufficient opportunity to do so in circumstances going to show that there was a dishonest intention, the Labour Court would have to think more than twice before directing reinstatement in the same post as conductor wherein he would be afforded the same opportunity or faced with the same temptation and the Corporation would be exposed to the same risk every day. Be it realised that misappropriation by a bus conductor must be viewed with a degree of seriousness especially having regard to the fact that it would make successful working a public Corporation impossible. In case misappropriation by a conductor is detected and he is found guilty, punishment must be deterrent to him as also to others, for misappropriation in such circumstances, would be in relation to public moneys and the burden would fall on the shoulders of the common man. And be it realised that 80 per cent of the total tax burden consists of indirect taxes which makes it impossible for the common man to stand erect and virtually makes him crounch on the ground. There is another tormenting reason for viewing the matter with anxious eyes. The Public Sector can never (NEVER) succeed if "everyone's property (which it in fact is) is treated as "no one's property. The New Culture for the New Man of New India must therefore be National Interest above all other interests including self-interest, sectional interest or class-interest. And therefore, the bus conductor, poor as he is, may have to suffer. We suffer more than him in having to say so, particularly, because big sharks never get caught. If they get caught they more often than not escape with impunity. But then merely because we cannot prevent the sharks escaping we cannot permit the fly to trifle with Public Property which is the poor men's collective property (if we envision for them a sun-lit day even on some distant tomorrow in the hidden future). Under the circumstances, the Labour Court was not justified in reinstating a conductor who had collected fare, pocketed the

same, and robbed the National Exchequer, in he same post where he could reindulge in the same weakness at public cost. The Labour Court, can depending upon facts and circumstances of the case and of the offender direct that he should be absorbed in the workshop section or some other similar post which does not involve daily handling of money. That must be left to the Labour Court. And the Labour Court would have to decide the issue having regard to facts and circumstances of each case and the demands of the situation in the context of each matter." (Emphasis supplied).

In the same manner, in another case decided by this Court in the case of Gujarat State Road Transport Corporation vs. Kachraji Motiji Parmar reported in 1993 (1) GLR, 302, this court has taken the same view. Paras-5 and 6 read as under:

"5. Lastly, we would refer to the decision of the Supreme Court in the case of State of Punjab and others vs. Ram Singh, Ex constable, JT 1992(4) SC 253, wherein the Court observed while interpreting Rule 16.2(1) of the Punjab Police Manual, 1934, Vol.II, wherein the Court observed that a single act of corruption is sufficient to award an order of dismissal under the Rule as gravest act of misconduct. The relevant observations of the Court are as under:

" Take for instance the delinquent that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates also records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct."

6. In the present case, it is apparent that the Labour Court has misdirected itself and has misplaced sympathy though the workman has committed grave misconduct. He has designedly reissued 15 used tickets. This would indicate that the workman had planned it in advance to collect the tickets from the passengers with view to re-issue the same in the next trip. Not only this, but the workman in the present case has not

issued tickets to the two passengers eventhough he had collected the fare from them. Further, he has not issued tickets to three passengers and lastly he has punched some tickets in such a manner so that they can be re-issued in subsequent trip. This conduct on the part of the workman establishes beyond any doubt that the act of the workman was pre-planned and well designed to misappropriate the Bus fare amount. Apart from this aspect, there was no reason for the Labour Court to ignore the fact that the workman was involved in 44 default cases and on one occasion he was removed from service. In this view of the matter, in our view, the order passed by the Labour Court is on the face of it unreasonable and unjustified. The Labour Court ought to have held that in the facts and circumstances of the case, this was not a fit case for exercise of jurisdiction under Section 11A of the Act."

Similarly, the Hon'ble Supreme Court in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and others vs. Secretary, Sahakari Noukarara Sangha and others reported in (2000) 7 SCC, 517 has also held that uncalled for sympathy ought not to be shown, in cases of misconduct of misappropriation. Relevant paragraphs 3,6 and 8 of the said judgment read as under:

" 3. The question involved in these appeals is whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondent workmen with 25% back wages in spite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages.

6. As stated above, the learned Single Judge and Division Bench in writ appeals confirmed the findings given by the Labour Court that charges

against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. (Re. Municipal Committee, Bahadurgarh vs. Krishnan Behari). In U.P. SRTC vs. Basudeo Chaudhary this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs. 65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly, in Punjab Dairy Development Corporation Ltd. vs. Kala Singh, this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflacted the quantum of milk supplies in the milk centres and also inflated the quality of a fat contents where there were less fat contents. The Court held (at SCC pp.161-62 para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty.

8. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty

imposed by the employer in such cases"

In the case of Karnataka State Road Transport Corporation vs. B.S.Hullikatti reported in (2001) 2 SCC, 574, the Hon'ble Supreme Court has also decided a similar case of a conductor of misconduct of misappropriation and dismissal from service and has upheld the punishment of dismissal awarded by the employer. Paras-5 and 6 of the said judgment read as under:

"5. On the facts as found by the Labour Court and the High Court, it is evident that there was short-changing of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct are which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty on as many as 36 times on different dates. Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his is bound to result in a financial loss to the appellant Corporation.

6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that Bus Conductors have have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare."

Similarly, in the case of Divisional Controller, KSRTC (NWKRTC) vs. A.T.Mane, reported in JT 2004(8) SC, 103, the Hon'ble Supreme Court has held in paras-4, 5 and 13 as under:

"4. As stated above, aggrieved corporation preferred a writ petition before the High Court of Karnataka. The learned Single Judge who heard the writ petition agreed with the Labour Court that since the corporation failed to examine the passengers from whom the said excess amount was collected, the charge of non-issuance of tickets or issuance of tickets of lesser denomination could not be upheld. The learned Single Judge also agreed with the Labour Court that the punishment awarded was also excessive however, it thought fit to reduce the back wages awarded by the Labour Court.

5. On appeal filed against the said judgment before the Division Bench of the High Court of Karnataka came to be dismissed by the Division Bench on two grounds firstly, it held that there was a delay of 16 days in preferring the appeal. However, the court observed that it would have certainly condoned the said delay had there been any merit in the appeal. Having said so the Division Bench held that they do not find any merit in the appeal and agreed with the single judge that the order of reinstatement with reduced back wages was a just order.

"13. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

(v) Principle of Res Ipsa Loquitur(Facts speak for themselves)

In the present case, additional cash for Rs. 315/- was found from the respondent conductor. There was a charge of re-issuance of already used tickets to the passengers by the respondent conductor. This additional cash speaks for itself. The principle of Res Ipsa Loquitur is clearly applicable in the present case as has been held by the Hon'ble Supreme Court in the case of Karnataka State Road Transport Corporation vs. B.S.Hullikatti reported in

(2001) 2 Supreme Court Cases 574, paragraph-5 thereof reads as under:

"On the facts as found by the Labour Court and the High Court, it is evident that there was short-changing of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty on as many as 36 times on different dates. Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant Corporation."

Similarly, in the case decided by the Hon'ble Supreme Court in the case of Divisional Controller, KSRTC (NWKRTC) vs. A.T.Mane, reported in (2005) 3 SCC, 254, it is held that the principle of res ipsa loquitur is applicable when the additional cash was found from the respondent conductor and the court should not have insisted for any further examination of passenger. Para-7 thereof reads as under:

"The fact that the respondent was carrying Rs. 93 in excess of the amount is a fact proved. This itself is a misconduct, and over and above that the courts below ought not to have insisted on examination of the passengers. Since the respondent did not have any explanation for having carried the said excess amount, this omission also is/was sufficient to hold the respondent guilty."

Thus, in the facts and circumstances of the case, the principle of res ipsa loquitur is applicable. The excess amount found from the possession of the conductor itself is a misconduct, especially when there is a change of reissuance of already used tickets to the passengers by the respondent conductor.

(vi) In the present case, the misconduct of the respondent was pre-planned. Issuance of already used tickets is a grave misconduct. The way bill was also kept open and additional cash was also found from the respondent. Thus, for such a grave misconduct, punishment inflicted by the petitioner Corporation was absolutely adequate. On the contrary, in similarly situated cases, punishment upto dismissal has been upheld as per the decisions referred to hereinabove. Already, sympathy has been shown by the petitioner Corporation. Further reduction in the punishment makes the same ineffective. The punishment should not be a punishment for name's sake. It must have an effect upon the delinquent and upon similarly situated other workmen. The Industrial Tribunal ought not to have interfered with the punishment inflicted by the petitioner. The reasons given for the reduction in the punishment are not true and correct. The bus was overcrowded and additional cash was found from the respondent workman may be a mistake as per the reasons given by the Tribunal for the reduction of the punishment. These reasons are not reasons at all. Even if the bus is overcrowded, unless there is a definite intention or pre-planned action, the respondent conductor could not have issued, the used tickets. The fact of re-issuance of tickets has been accepted by the Industrial Tribunal in para-11 of the award. As cumulative effect of the aforesaid facts, the quantum of punishment inflicted by the petitioner was absolutely just, proper and adequate and could not be labelled as unreasonably excessive or shockingly disproportionate. The Industrial Tribunal ought not to have interfered with the quantum of punishment in exercise of powers under section 11-A of the Industrial Disputes Act, 1947.

6. In view of the aforesaid facts and circumstances and the judicial pronouncements, the award dated 5th June, 2004 passed by the Industrial Tribunal, Rajkot is hereby quashed and set aside. The punishment inflicted by the petitioner Corporation upon the respondent conductor is upheld. Rule is made absolute accordingly with no order as to costs.

(D.N.Patel,J)

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